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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/724,584	11/26/2003	Gregory J. Haubrich	P-11280.00	9863
27581	7590	09/14/2005	EXAMINER	
MEDTRONIC, INC. 710 MEDTRONIC PARKWAY NE MS-LC340 MINNEAPOLIS, MN 55432-5604			FAULCON JR, LENWOOD	
			ART UNIT	PAPER NUMBER
			3762	

DATE MAILED: 09/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/724,584

Applicant(s)

HAUBRICH ET AL.

Examiner

Lenwood Faulcon, Jr.

Art Unit

3762

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 November 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-61 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-61 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>9/30/04 & 5/16/05</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-27, 29, 31-44, 46-61 are rejected under 35 U.S.C. 102(b) as being anticipated by Haubrich et al. (U.S. Patent No. 6,482,154).

Haubrich et al. teaches of a long range implantable medical device telemetry system with positive patient identification, which comprises the use of an external programmer (20). Haubrich et al. also teaches of an initiation of a telemetry session including patient stimuli, which would provide notification to the patient of the initiated session (col. 12 lines 54-60), by any one of numerous detectable stimuli (col. 12 lines 60-63). Haubrich et al. further teaches of bi-directional communications between the implanted medical device and the external device may now begin (col. 12 lines 64-67). Haubrich et al. also teaches that a patient may be requested to perform a response-provoking event that is detectable by the implanted medical device (col. 13 lines 1-7), which may lead to the initiating of a telemetry session (col. 13 lines 8-21 and 41-45). Haubrich et al. further teaches of the patient's action may be a physical action, such as moving a magnet over the medical device (col. 10 lines 1-4). Haubrich et al. also teaches of the use of telemetry interrogation (col. 4 lines 17-20).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 28, 30 and 45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Haubrich et al. (U.S. Patent No. 6,482,154) as applied to claims 1-27, 29, 31-44, 46-61 above.

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify the system as taught by Haubrich et al. to have an input medium comprising any one of the commonly known detectable input mediums, including a keyboard, a keypad and others input mediums, since these mediums are well known in the art to provide efficient and accurate input into a system, as taught by Haubrich et al. (col. 5 lines 3-5). It would have also been obvious to one having ordinary skill in the art at the time of the invention to modify the system as taught by Haubrich et al. to have the response device comprising any one of the commonly known sensors, such as blood oxygenation, accelerometers and others, since these sensors are well known in the art to provide efficient sensing capabilities, as taught by Haubrich et al. (col. 3 lines 53-59). Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to have the limitations of claims 28, 30 and 45.

Conclusion

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Ferek-Petric (U.S. Patent No. 5,076,272), Sanders et al. (U.S. Patent No. 5,609,615), Duffin et al. (U.S. Patent No. 5,752,976), Greeninger et al. (U.S. Patent No. 5,891,180), DeGroot (U.S. Patent No. 5,987,356), Greeninger et al. (U.S. Patent No. 6,067,473), Alt et al. (U.S. Patent No. 6,073,049), Goedeke et al. (U.S. 2001/0012955),

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Haller et al. (U.S. 2001/0051787), Linberg (U.S. 2002/0095196), Webb et al. (U.S. 2002/0123673).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lenwood Faulcon, Jr. whose telephone number is 571-272-6090. The examiner can normally be reached on Monday-Thursday from 9 to 5 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela D. Sykes, can be reached on 571-272-4955. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Lenwood Faulcon, Jr.



George Manuel

Primary Examiner